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7590

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Matthew E. Leno  
McDermott, Will & Emery  
31st Floor  
227 West Monroe Street  
Chicago, IL 60606

EXAMINER

DYE, RENA

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/901,427

Applicant(s)

CURIE ET AL.

Examiner

Rena L. Dye

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-98 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-98 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 1-9,11,12,14-25,27-33,36-41,43-49,52-57,59-65,68-73 and 75-98 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant only discloses maleic anhydride as the adhesive. Therefore, one having ordinary skill in the art would not have known what other materials could be used in Applicant's invention as an "adhesive" for bonding the layers. Although the specification discloses at page 8, first paragraph, that "an appropriate adhesive is chosen dependent upon the material of the middle layer 26 to bond the inner and outer layers 24,28 thereto", however, it is noted that Applicant is only disclosing and claiming layers of polypropylene and EVOH/nylon specifically, which are bonded using an adhesive, the adhesive more specifically being maleic anhydride (page 14, first embodiment). Therefore, Applicant has not clearly enabled the bonding of polypropylene and EVOH/nylon with anything other than maleic anhydride, thus, the present claims should be limited accordingly.

2. Claims 83,84 and 91 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of "the adhesive" in claims 83,84 and 91 are indefinite because they lack antecedent basis. Claim 82 from which they depend does not positively recite an "adhesive".

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3. Claims 7,23,39,55,71 and 88 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "MXD6" is a tradename which is deemed to be indefinite when used in claim language. Applicant should use generic terminology in defining the tradename, and should not add new matter when defining the tradename.

4. The use of the trademark "MXD6" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

5. Claims 2-3 and 18-19 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the claims, "the first layer comprising approximately ...maleic anhydride" is confusing. Is the maleic anhydride what is being referred to as the adhesive in claim 1, or is it an additional component? Clarification is requested.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

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basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1,6-10,17,22-26,33,38-42,49,54-58,65,70-74,81,82,87-91 and 98 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilpers et al. (H1419).

Wilpers provides a composition comprising functionalized high melt flow polyolefin (adhesive) and unfunctionalized polyolefin. The composition exhibits improved adhesion to polar materials. Functionalization is accomplished by reacting with a carboxylic acid anhydride, which can be exemplified by maleic anhydride, and is the preferred functional group (column 1, lines 39-55; column 2, lines 47-51). Example 1 illustrates a composition including an unmodified polypropylene with a modified polybutylene (Example 1). The compounds have numerous uses in producing films, molded parts, cups, trays, and containers. Improved adhesion is exhibited, especially towards polar substrates, such as EVOH copolymer and polyamides (nylons) (column 2, lines 52-59).

### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-5,11-15,18-21,27-31,34-37,43-47,50-53,59-63,66-69,75-79,83-86 and 92-96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilpers et al. (H1419).

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Wilpers et al. has been previously discussed above. Although Wilpers does not specifically teach the claimed amount of maleic anhydride, it would have been obvious to one having ordinary skill in the art to have varied the amount of maleic anhydride grafted to the polybutylene to have provided varying degrees of adhesion to the polar substrates. Therefore, the amount of maleic anhydride (about 0.01 to about 0.20 percent by weight) would have been known or easily determined by one having ordinary skill in the art since it provides the function of adhering a polypropylene layer to an EVOH or nylon layer, as does Applicant's claimed invention.

Since Applicant's claimed invention is met by Wilpers, it is the Examiner's position that the recited haze value would have been within the scope of the reference, or obvious to one having ordinary skill in the art to have achieved the haze value based upon the teaching of the reference.

As broadly as the invention is recited, the claims would include the blend taught by Wilpers which includes an unmodified polypropylene with a modified polybutylene directly bonded to the EVOH/nylon layer.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1-98 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10,12-18,24,27-30,42 and 44-81 of copending Application No. 09/293,401. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present patent application are broad enough to include or encompass the claimed subject matter of copending application Serial No. 09/239,401.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 1-98 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 09/539,529. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present patent application are broad enough to include or encompass the claimed subject matter of copending application Serial No. 09/539,529.

not allowed yet

#### ***Information Disclosure Statement***

13. The information disclosure statement (IDS) submitted on June 17, 2002 was filed after the mailing date of the last Office action on May 7, 2002. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rena L. Dye whose telephone number is 703-308-4331. The examiner can normally be reached on Monday -Thursday 8:30 AM - 7:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 703-308-5183. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Rena L. Dye  
Primary Examiner  
Art Unit 3627

R. Dye  
September 6, 2002